

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6615

BILL NUMBER: SB 386

NOTE PREPARED: Jan 10, 2014

BILL AMENDED:

SUBJECT: DNA Samples from Arrestees.

FIRST AUTHOR: Sen. Wyss

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

Arrestee DNA Sample: It requires every person arrested after June 30, 2014, for burglary, residential entry, a crime of violence, or a sex offense to submit a DNA sample, and specifies that the sample may be taken only by buccal swab.

Expungement: The bill provides for the expungement of a DNA sample taken from the person if the person is acquitted of all felony charges, all burglary, residential entry, crime of violence, and sex offense charges are dismissed, or no charges have been filed after 30 days.

It requires the officer who obtains a DNA sample from a person to inform the person of the right to DNA expungement and to provide the person with a form that may be used for DNA expungement, and permits the use of evidence other than a court order for expungement.

Fee Increase: It increases the DNA sample processing fee from \$2 to \$4, and it allocates \$500,000 semiannually to hold harmless all funds and to provide an additional amount to the DNA processing fund.

Bail Revocation: Specifies that the discovery of previously unknown crimes committed by a person on bail may lead to revocation of bail or an increase in the amount of bail.

Effective Date: July 1, 2014.

Summary of NET State Impact: Increasing the DNA Sample Processing Fee is estimated to yield new revenue of \$1.15 M that would be deposited into the state General Fund. The bill specifies that an additional \$1 M above current allocations would transfer from the state General Fund to nine dedicated funds under IC 33-37-7-9. This will result in a net increase of \$150,000 to the state General Fund.

Of the additional \$1 M transfer, the majority (\$999,762) would be deposited into the DNA Sample Processing Fund. The estimated additional expenditures for the Indiana State Police (ISP) to collect and analyze DNA samples for arrestees is \$219,051. This would provide \$780,711 additional funding in the DNA Sample Processing Fund administered by the ISP.

Summary of Fiscal Effects				
	FY 2014	FY 2015	FY 2016	FY 2017
Transfer- State GF to DNA Sample Processing Fund	\$999,762	\$999,762	\$999,762	\$999,762
Added Costs for State Police	<u>219,051</u>	<u>219,051</u>	<u>219,051</u>	<u>219,051</u>
Net Effect on Indiana State Police	<u>\$780,711</u>	<u>\$780,711</u>	<u>\$780,711</u>	<u>\$780,711</u>

Explanation of State Expenditures: Summary- This bill potentially increases costs for the ISP to collect additional DNA samples from any person arrested for committing certain violent felonies after June 30, 2014, and to provide analysis of the DNA sample. Using the annual number of samples currently collected and analyzed and the current cost of kits, shipping, and analysis, it is estimated that the added costs for the State Police are about \$219,051 annually.

Additional Information: Current law requires offenders convicted of a felony after June 30, 2005, to provide a DNA sample to the Department of Correction (DOC), the county sheriff, or the agency supervising the individual. In-house costs of \$6 for the collection kits and shipping to the laboratory, \$20 for the staff examination and discard of duplicates, and the analysis and typing of new specimens were applied. A projection was made of the additional costs by increasing the average annual samples received and analyzed between 2008 and 2012 by 30% and 50%. The average of the results, \$219,051, is used as the estimated increase in cost for ISP.

**Cost Range for Processing New Samples for
Persons Who Are Arrested in First Year If NEW Work Is Performed In-House**

Estimate	DNA Samples Received		DNA Kits and Shipping		Samples Processed		Analysis		Cost
Low	8,830	x	\$6.00	+	5,565	x	\$20.00	=	\$164,280
High	14,717	x	\$6.00	+	9,276	x	\$20.00	=	<u>\$273,882</u>
Average of Low and High									<u>\$219,051</u>

Note: See *Calculating Additional Samples* for explanation of level of increase.

Expungement: Besides the costs for collection and analysis, the cost to expunge the record of DNA samples of persons who were arrested and whose case was either acquitted or dismissed would likely increase. LSA anticipates that the records and DNA samples can be expunged with current resources. ISP reports that very few DNA samples are currently expunged because most convictions are not overturned on appeal. Since arrests are not as likely to lead to a conviction, it is likely that ISP will need to spend more time expunging the paperwork and destroying the samples.

To estimate the percentage of cases that might be expunged, LSA used (1) the percentage of all felony cases that were filed in the state court system in CY 2011 and later dismissed and (2) acquittal rates published by the Bureau of Justice Statistics for felony cases in the 75 most populous counties in the United States. An estimated 20% of all arrests are assumed to be either dismissed or acquitted. The total number of DNA samples that would need to be expunged could be between 5 and 8 each day.

Under current law, ISP would only expunge cases if the person who has been arrested requests expungement. The person could only request that the samples be expunged if the arrested person is not charged, the person is acquitted of all charges, the conviction on which the authority for inclusion is based has been reversed, the case is dismissed, or no charges have been filed against the person within 30 days.

Annual Number of New DNA Arrestee Samples Expunged

Estimate	New Samples		Percent of Cases Expunged		New Arrestee Samples Expunged		Working Days Per Year		Expungements Per Day (Rounded up)
Low	5,565	x	20%	=	1,113	÷	250	=	5
High	9,276	x	20%	=	1,855	÷	250	=	8

*Note: See *Calculating Additional Samples* for explanation of level of increase.

Department of Correction: The DOC currently collects DNA samples of first-time offenders when they are committed to DOC facilities. Men are committed to the Reception Diagnostic Center, while women are committed to the Rockville Correctional Facility Intake Unit. Since DNA samples will now be collected at the time of a felony arrest, this bill would reduce the responsibilities for staff at these two facilities.

Calculating Additional Samples: On average between CY 2009 and CY 2013, ISP received 29,436 samples and processed 18,551. At LSA's request, the ISP surveyed nine states that have added DNA arrestee language to their statutes since 2003. Seven of these states, Alaska, Arizona, Louisiana, New Mexico, Tennessee, Texas, and Virginia, now require any person arrested for violent felonies to submit a DNA specimen. Based on their experience, LSA projects that the number of DNA samples that the ISP will receive and be required to process will increase between 30% and 50%, these became the range to estimate a high and low increase.

Actual ISP Samples Received and Processed by Calendar Year

DNA Samples	2009	2010	2011	2012	2013	Average
Received	32,644	32,037	28,732	27,345	26,420	29,436
Processed	20,509	19,544	18,198	17,575	16,929	18,551

*Based information available between January 1 through October 31.

Based on the five-year average shown in the previous table, the following table shows projections of the percentage increase in samples that will be received and processed with a high and low range.

Estimated New DNA Samples to be Received and Processed

	5-Year Average	Low (30% increase)	High (50% increase)
Received	29,436	8,830	14,717
Processed	18,551	5,565	9,276

Crimes covered under this bill include the following.

Aggravated battery (IC 35-42-2-1.5)	Operating a motor vehicle while intoxicated causing death (IC 9-30-5-5)
Attempted murder (IC 35-41-5-1)	Operating a motor vehicle while intoxicated causing serious bodily injury to another person (IC 9-30-5-4)
Burglary as a Level 1 or a Level 2 felony (IC 35-43-2-1)	Possession of child pornography (IC 35-42-4-4(c))
Child exploitation (IC 35-42-4-4(b))	Promoting prostitution (IC 35-45-4-4) as a Level 4 felony
Child molesting (IC 35-42-4-3)	Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the victim is less than 18 years of age
Child seduction (IC 35-42-4-7)	Rape (IC 35-42-4-1)
Child solicitation (IC 35-42-4-6)	Reckless homicide (IC 35-42-1-5)
Criminal confinement (IC 35-42-3-3), if the victim is less than 18 years of age, and the person who confined or removed the victim is not the victim's parent or guardian	Resisting law enforcement as a felony (IC 35-44-3-3)
Criminal deviate conduct (IC 35-42-4-2)	Robbery as a Level 2 or Level 3 felony (IC 35-42-5-1)
Human trafficking (IC 35-42-3.5-1(c)(3)) if the victim is less than 18 years of age	Sexual battery (IC 35-42-4-8)
Incest (IC 35-46-1-3)	Sexual misconduct with a minor as a Level 1, Level 2, or Level 4 felony

Involuntary manslaughter (IC 35-42-1-4)	Sexual trafficking of a minor (IC 35-42-3.5-1(b))
Kidnapping (IC 35-42-3-2)	Vicarious sexual gratification (including performing sexual conduct in the presence of a minor) (IC 35-42-4-5)
Murder (IC 35-42-1-1)	Voluntary manslaughter (IC 35-42-1-3)

Explanation of State Revenues: *DNA Sample Processing Fee:* An increase of the DNA Sample Processing fee from \$2 to \$4 would potentially increase revenue which is deposited in the state General Fund by \$1.15 M. Overall, the bill would result in a net increase to the state General Fund of \$150,000, because an additional \$1 M would be transferred from the state General Fund to various other programs. [Under current law, a transfer of \$9,277,023 is made twice during the year. The bill would increase the biannual payment to \$9,777,023.]

Allocation from State General Fund: The bill would change the semi-annual percentages allocated to each of nine funds from a state General Fund transfer and increase the amount allocated semi-annually by \$500,000.

Distribution Fund	Current Law	Current Amount	Proposed Bill	Proposed Amount	Difference
Family Violence and Victim Assistance Fund IC 5-2-6.8-3	8.03%	\$744,945	7.62%	\$745,009	\$64
Indiana Judges' Retirement Fund IC 33-38-6-12	38.55%	3,576,292	36.58%	3,576,434	142
Law Enforcement Academy Building Fund IC 5-2-1-13	2.56%	237,492	2.43%	237,582	90
Law Enforcement Training Fund IC 5-2-1-13	10.27%	952,750	9.74%	952,282	(468)
Violent Crime Victims Compensation Fund IC 5-2-6.1-40	11.93%	1,106,749	11.32%	1,106,759	10
Motor Vehicle Highway Account	19.49%	1,808,092	18.49%	1,807,772	(320)
Fish and Wildlife Fund IC 14-22-3-2	0.25%	23,193	0.24%	23,465	272
Indiana Judicial Center Drug and Alcohol Programs Fund IC 12-23-14-17	1.63%	151,215	1.55%	151,544	329
DNA Sample Processing Fund IC 10-13-6-9.5	7.29%	<u>676,295</u>	12.03%	<u>1,176,176</u>	<u>499,881</u>
	100.00%	<u>\$9,277,023</u>	100.00%	<u>\$9,777,024</u>	<u>\$500,000</u>

Additional Information: The DNA Sample Processing fee is assessed on a person who is found guilty of a crime (felony or misdemeanor), an infraction, or an ordinance violation. Using the five-year revenue history, the average annual collection is \$1.15 M. A doubling of the fee is expected to double the amount of revenue received.

<u>FY</u>	<u>Revenue</u>
2009	\$1,251,797
2010	\$1,338,113
2011	\$1,090,692
2012	\$1,019,552
2013	<u>\$1,034,405</u>
Average	\$1,146,912

Explanation of Local Expenditures: *Added Collection Costs for County Sheriffs:* County sheriffs collecting the samples would incur additional costs to train staff to collect samples and ensure that the chain of evidence is not broken. Sheriff's staff collect saliva from an arrested person by placing a cotton swab in the arrested person's mouth.

The officer, employee, or person who obtains a DNA sample from a person is to inform the person of the person's right to DNA expungement and provide the person with a form that may be used for DNA expungement.

Bail Revocation: If bail is revoked because of the discovery of previously unknown crimes committed by a person on bail, the number of people incarcerated in a county jail awaiting trial could increase. The average daily cost of incarceration in a county jail is \$44.

Explanation of Local Revenues:

State Agencies Affected: Indiana State Police; Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Kristine Crouch, CODIS Administrator, ISP; *Indiana Judicial Report*, 2011; *Indiana Handbook of Taxes, Revenues, and Appropriations*, 2012;

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